STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED July 22, 2014
v	No. 317723 Wayne Circuit Court
JAMES RAHEEM RAINS, Defendant-Appellee.	LC No. 12-000439-FC

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

As directed by our Supreme Court, we consider this appeal from the prosecution as on leave granted.[1] The prosecution appeals from the order of the trial court granting defendant's motion to withdraw his guilty plea. We reverse and remand for reinstatement of defendant's plea-based conviction and sentence.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case arises out of defendant's guilty plea to second-degree murder, MCL 750.317, on August 13, 2012. At the plea hearing, the court confirmed that defendant was aware of his rights in pleading guilty. Defendant stated that it was his choice to plead guilty, he had not been threatened to make the plea, was not under any undue influence, and was entering into the plea freely and voluntarily. Defendant testified that he hit the victim, Bridgette Coppernoll, "in the back of the head with a hammer," causing her death. The court accepted defendant's plea. On August 28, 2012, defendant was sentenced, in accordance with the plea agreement, to 25 to 50 years in prison.

[1] On November 3, 2013, this Court denied the prosecution's application for leave to appeal. *People v Rains*, unpublished order of the Court of Appeals, entered November 3, 2013 (Docket No. 317723). However, our Supreme Court, in lieu of granting the prosecution's application for leave to appeal, remanded to this Court "for consideration as on leave granted." *People v Rains*, 495 Mich 963; 843 NW2d 749 (2014).

On February 28, 2013, defendant filed a motion to withdraw his guilty plea with the trial court. Defendant argued that his trial counsel did not advise him of the elements of the second-degree murder offense, that his plea was not voluntary, knowing, and intelligent, and that the factual basis was insufficient to support a second-degree murder conviction. On March 15, 2013, the successor trial court[2] heard defendant's motion to withdraw his plea. After hearing the parties' arguments, the court determined that an evidentiary hearing was necessary before determining whether to grant or deny defendant's motion to withdraw his plea.

At the hearing, defense counsel testified that he met with defendant on "several occasions," and all of the conversations were "very fluid and very intelligent." Defense counsel confirmed that he was aware of defendant's medical history and that defendant had had a brain injury.[3] Defense counsel also testified that he advised defendant on the elements of the offenses and all possible defenses, including heat of passion and self-defense, relating to second-degree murder. The court granted defendant's motion to withdraw his plea, citing concern that it was defense counsel, rather than the court itself, who had questioned defendant at his plea hearing to establish a factual basis for second-degree murder, including defendant's intent. The court was also concerned that defendant's intent to kill was not expressed on the record. On June 26, 2013, the trial court entered an order granting defendant's motion to withdraw his plea, and vacating his plea agreement and sentence. The trial court granted a stay until the prosecution's appeal was resolved.

On appeal, the prosecution argues that the successor trial court erred by granting defendant's motion to withdraw his guilty plea because the trial court substantially complied with all the requirements of MCL 6.302, and because a sufficient factual basis was established for all of the elements of second-degree murder. We agree.

II. STANDARD OF REVIEW

This Court "reviews for an abuse of discretion a trial court's ruling on a motion to withdraw a plea." *People v Brown*, 492 Mich 684, 688; 822 NW2d 208 (2012). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *People v Buie*, 491 Mich 294, 320; 817 NW2d 33 (2012).

III. COMPLIANCE WITH MCR 6.302

MCR 6.302(A), which governs the requirements the trial court must follow when taking a guilty plea, provides:

> **(A) Plea Requirements.** The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and

[2] Judge James A. Callahan succeeded Judge Carole Youngblood in hearing defendant's motion to withdraw his guilty plea.

[3] According to defendant, he was in a car accident in April 2011, was hospitalized for a couple of days, and received follow-up treatment from a chiropractor and physical therapist.

> accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant or defendants under oath and personally carry out subrules (B)-(E).

MCR 6.302(B)-(E) outline the requirements for what it means for a plea to be understanding, voluntary, and accurate. It is only necessary for the trial court to substantially comply with the requirements of MCR 6.302. *People v Plumaj*, 284 Mich App 645, 649; 773 NW2d 763 (2009). The successor trial court, in granting defendant's motion to withdraw his plea, took issue with the "understanding" element, specifically, that the court did not articulate the intent element of second-degree murder on the record pursuant to MCR 6.302(B)(1), and failed to establish that defendant intended to kill the victim. MCR 6.302(B) states in relevant part:

> **(B) An Understanding Plea.** Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:
>
> (1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses . . . .

The rule explicitly states that the court is not obligated to articulate the elements of the offense for the defendant. MCR 6.302(B)(1). However, defendant relies on *Henderson v Morgan*, 426 US 637, 647; 96 S Ct 2253; 49 L Ed 2d 108 (1976), to argue that the offense of second-degree murder must be treated differently and the elements of the offense must be read on the record. The Supreme Court held in *Henderson* that "intent is such a critical element of the offense of second-degree murder that notice of that element is required." *Id*. The Court in *Henderson* analyzed a New York statute, which stated that second-degree murder included the element that a defendant's conduct was "committed with a design to effect the death of the person killed." *Id*. This language indicates that the intent to kill was specifically included in the New York statute.

No binding Michigan cases specifically analyze a guilty plea for second-degree murder, or any binding precedent that applies *Henderson* to Michigan law. However, this Court has twice considered the applicability of *Henderson* to the facts before it. First, this Court held in *People v Davis*, 76 Mich App 187, 189; 256 NW2d 576 (1977), that *Henderson* did not apply because "[t]he actual intent to kill is not an essential element of the crime of second-degree murder in Michigan" as it was in *Henderson*. This Court held that because *Henderson* did not apply, the trial court was not required to articulate the elements of second-degree murder on the record, and it was not necessary for the defendant to stipulate that he intended to kill the victim. *Id*.

This Court reached a different result in *People v Hicks*, 96 Mich App 610, 612; 293 NW2d 646 (1980), where it found that *Henderson* applied primarily due to factual similarities between *Hicks* and *Henderson*. In both cases, the defendants, who had abnormally low mental capacity, pleaded guilty to second-degree murder without stipulating to the requisite intent during the plea hearing. *Id*.; *Henderson*, 426 US at 647. However, the facts here are markedly different. While defendant argues that he suffers from Attention Deficit Hyperactivity Disorder and anxiety, he fails to cite any case law supporting the conclusion that these disorders rendered his plea involuntary. Moreover, the Court in *Henderson* indicated that the defendant had

"unusually low mental capacity," *Henderson*, 426 US at 647; however; there is no record that this defendant's mental capacity was similarly low.

Pursuant to MCR 2.215(J)(1), neither *Davis* nor *Hicks* is binding authority on this Court. However, the holding in *Davis* is persuasive, because the statute at issue in *Henderson* contained different requirements – the intent to kill – compared to MCL 750.317 – which includes a less stringent intent element within "malice" – and defendant does not suffer from a similar mental illness as did the defendants in *Henderson* and *Hicks*.

Second-degree murder in Michigan, MCL 750.317, may be committed without the specific intent to kill. See *People v Portellos*, 298 Mich App 431, 443; 827 NW2d 725 (2012). "The elements of second-degree murder are (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *Id*. "Malice" includes an intent requirement: "the intent to kill, the intent to cause great bodily harm, or the intent to take an action whose natural tendency is to cause death or great bodily harm, wantonly and willfully disregarding that risk." *Id*. This elemental difference again indicates that *Henderson* does not apply here because the "malice" element is different than the rigid element of intent to kill. Therefore, MCR 6.302(B)(1) governs, and the trial court was not required to articulate the elements of second-degree murder on the record.

Moreover, even if this Court were to apply *Henderson*, our holding would remain the same. The Court held in *Henderson*:

> Normally the record contains either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused. Moreover, even without such an express representation, it may be appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit. [*Henderson*, 426 US at 647.]

Here, defendant's trial counsel testified that he did advise defendant of the charges he faced, and all possible defenses. Thus, an application of *Henderson* leads to the same conclusion – that the successor trial court abused its discretion by granting defendant's motion to withdraw his guilty plea.

Lastly, the successor trial court was troubled by the trial court's failure to personally question defendant regarding a factual basis for the offense. Pursuant to MCR 6.302(D)(1), in order to establish an accurate guilty plea, ". . . the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading." The trial court and defendant's counsel both engaged in questioning defendant to establish a factual basis. Specifically, the following exchange occurred between defendant's counsel, defendant, and the trial court, at the plea hearing:

> *The Court:* This happened on December 17, 2011, at the location of 12724 Evanston in the city of Detroit. Would you – were you at that location on that date, sir?

The Defendant: Yes.

The Court: And would you establish a factual basis for the plea?

Mr. Harris [defendant's counsel]*:* And was a Ms. Coppernoll at that location? Coppernoll.

* * *

The Defendant: Bridgette Coppernoll. I know her by Heaven.

Mr. Harris: As one individual by the name of Heaven at that location.

The Defendant: Yes.

Mr. Harris: And did you get into a fight with her?

The Defendant: Yes.

Mr. Harris: And did you hit her in the back of the head with a hammer?

The Defendant: Yes.

The Court: And as a result of you hitting her in the back of the head with that hammer, she died?

The Defendant: Yes.

Mr. Harris: Is that correct? She died; is that correct?

The Defendant: Yes.

Our Supreme Court has held, in the context of providing a pleading defendant with the necessary information, that the trial court is not required to fulfill all of the necessary requirements through direct colloquy with the defendant; as long as it "assumes the principal burden of imparting the required information," then the main purpose – that the court can observe the defendant's demeanor and responses – is achieved. *In re Guilty Plea Cases*, 395 Mich 96, 114; 235 NW2d 132 (1975). Similarly, here the trial court assumed the principal burden and was able to observe defendant's demeanor and his responses to questions, both from the trial court and from defense counsel. The trial court noted when accepting defendant's plea, that defendant's plea was made accurately, voluntarily and with an understanding of the offenses, and the nature of the offenses. The trial court also ensured, on the record, that both parties were satisfied with the court's compliance with the requirements of taking a plea. Thus, the mere fact that defendant's trial counsel assisted the court in establishing a factual basis is not enough to render defendant's plea invalid.

IV. FACTUAL BASIS FOR SECOND-DEGREE MURDER

As previously stated, the trial court must question a defendant to establish a factual basis that the "defendant is guilty of the offense charged, or the offense to which the defendant is

pleading." MCR 6.302(D)(1). A factual basis exists "if the factfinder could properly convict on the facts elicited from the defendant at the plea proceeding." *People v Fonville*, 291 Mich App 363, 396; 804 NW2d 878 (2011) (internal citations omitted). But a factual basis can also exist if "an inculpatory inference can reasonably be drawn by a jury from the facts admitted by the defendant even if an exculpatory inference could also be drawn and defendant asserts the latter is the correct inference." *Id.* (internal citations omitted).

Defendant pleaded guilty to second-degree murder, which again requires the following elements: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *Portellos*, 298 Mich App at 443. Defendant argued, in his motion to withdraw his guilty plea and on appeal, that neither a factual basis for the malice element, nor a factual basis for the element of "without justification or excuse," was established. However, our Supreme Court has held that the "facts and circumstances of the killing may give rise to an inference of malice." *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). Defendant testified that he hit Coppernoll in the back of the head with a hammer. Use of a blunt object to strike the back of a victim's head, resulting in death, can support the inference of malice. *Carines*, 460 Mich at 759; see also *People v Williams*, 126 Mich App 717, 719-720; 337 NW2d 903 (1983) ("An inference of an intent to do great bodily harm could reasonably be drawn by a jury from defendant's admission that he hit his victim on the back of the head with a baseball bat."). Examining all the facts and circumstances surrounding the victim's death, it can be inferred that defendant, at the very least, intended to take an action "whose natural tendency is to cause death or great bodily harm, wantonly and willfully disregarding that risk," by hitting Coppernoll in the back of her head. *Portellos*, 298 Mich App at 443. Thus, a factual basis for the malice element was sufficiently established.

Defendant also contended that the "without justification or excuse" element also did not have the requisite factual basis. However, a factual basis can exist if an "inculpatory inference can reasonably be drawn by a jury from the facts . . . ." *Fonville*, 291 Mich App at 396. Based on the fact, to which defendant testified, that he struck Coppernoll in the *back* of her head, a jury could find an inculpatory inference that defendant took such action without justification or excuse. Any exculpatory inference that the jury could draw, that defendant may have been acting in self-defense because he was engaged in a fight with Coppernoll, does not negate the factual basis established at the plea hearing. Because there were enough facts elicited at defendant's plea hearing, a sufficient factual basis was established, and defendant's guilty plea should not have been withdrawn. The trial court abused its discretion by finding otherwise when granting defendant's motion to withdraw his guilty plea.

Accordingly, we reverse the trial court's order permitting defendant to withdraw his plea and remand for reinstatement of defendant's plea-based conviction and sentence. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto